

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Charleston Division**

JASON WEBB,

Plaintiff,

v.

**CIVIL ACTION NO.: 2:19-CV-447
(Judge John T. Copenhaver)**

**STEVEN L. PAINE, State Superintendent of
Schools, in his individual capacity and official
capacity; and JAN BARTH, Assistant State
Superintendent of Schools, in her individual
capacity and official capacity,**

Defendants.

**MOTION OF STEVEN L. PAINE AND JAN BARTH
FOR SUMMARY JUDGMENT**

The crux of this case involves the State of West Virginia's decision to utilize the SAT for the state-wide 11th grade assessment, rather than the ACT. While the Plaintiff may have been a lobbyist for ACT, he has no standing to pursue any claims on ACT's behalf, and that lack of standing is dispositive of any claim predicated upon the State's selection of SAT. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (Elements of standing "are not mere pleading requirements but rather an indispensable part of the plaintiff's case" and "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof. . . .") (citations omitted).

Regardless, there is no causal connection between any alleged conduct of the Defendants and any alleged injury to Plaintiff. It is undisputed that ACT never directed Plaintiff to cease or "tone down" his "tweets" as a result of Drs. Paine's and Barth's complaints to ACT. Moreover, ACT has testified that those complaints were not a factor in ACT's termination of its lobbying agreement with Plaintiff. The absence of any causal connection is dispositive of both the Plaintiff's

First Amendment retaliation claim and his tortious interference claim. Additionally, Dr. Paine and Dr. Barth have qualified immunity from suit, and the conduct Plaintiff complains of was justified. Finally, as his First Amendment and Tortious Interference claims fail, Plaintiff's civil conspiracy claim likewise fails. Accordingly, pursuant to FED. R. CIV. P. 56, the Defendants are entitled to the summary dismissal of this case, with prejudice.

WHEREFORE the Defendants, Steven L. Paine and Jan Barth, by and through their attorneys, Jan L. Fox, Esquire, Mark C. Dean, Esquire and the law firm of Steptoe & Johnson PLLC, respectfully request this Court enter an Order granting them summary judgment on the Plaintiff's Complaint and dismissing this civil action, with prejudice. The legal basis for this Motion is more fully set forth in the Memorandum of Law filed contemporaneously herewith.

**STEVEN L. PAINE
and JAN BARTH,**

By Counsel,

/s/ Jan L. Fox
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STEPTOE & JOHNSON PLLC
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st of August, 2020, I served copy of “**MOTION OF STEVEN L. PAINE AND JAN BARTH FOR SUMMARY JUDGMENT**” upon the following counsel of record via the CM/ECF system:

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/s/ Jan L. Fox

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